

REMARKS/ARGUMENTS

Reordering of Claims for Election Restriction Requirement

The restriction requirement is considered to impose an inappropriate grouping of the claims in that it fails to provide a consistent grouping of the claims that reflect a complete embodiment of the invention as claimed by the inventors. For example, the process of making the compound of General Formula I as diagrammed in Claim 1 is not Claim 2 but in fact, the General Formula is provided by Claim 20. This is apparent when reviewing the two constituent molecules which are reacted to produce the final General Formula, including all 17 of the R constituents shown in both Claims 1 and 20. In contradistinction, none of process of making Claims 19 or 21-23 include the benzene ring with N-Arylsulfonyl having R₅-R₉ substituted for the Hydrogen atom of the constituent formula (IV) attached to the Nitrogen atom of formula (III). Thus, the claims have been reordered in Groups, and Group I claims, Claims 1-4, 6-7, 13, 15-16 20, 26 and 31 are elected for further prosecution in this application. Claims 6-7 and 15 -16 each provide for a method of use or treatment of the compound of General formula I (Claim 1) which is intended to provide a specific course of treatment for specified conditions, by selective action to a specified receptor site. Claim 31 merely provides for an intermediate compound of Formula (IV)

Traversal of the Restriction Requirement

It is respectfully suggested that an improper standard has been applied with respect to the restriction requirement. In a recent Federal Circuit opinion, the basis was again set forth on which a restriction requirement is proper under U.S. Patent Laws and Regulations:

“...The Patent Office can issue a restriction requirement if it finds that two or more inventions claimed in a patent application are “independent and distinct.” 35 U.S.C. § 121 (1994). A process and apparatus (tool) for its practice can be restricted if either “the process *as claimed* can be practiced by another materially different apparatus or by hand”

as claimed can be practiced by another materially different apparatus or by hand" or "the apparatus *as claimed* can be used to practice another and materially different process." Man. Pat. Examining Proc. § 806.05(e) (7th ed. 1998)....." Helifix Ltd. v. Blok-Lok Ltd., 1305 (Fed.Cir. 2000) 54 USPQ2d 1299, 1305. *See also, Applied Materials Inc. v. Advanced Semiconductor Materials* (Fed.Cir. 1996) 40 USPQ2d 1481.

The restriction requirement is improper because the application claims have not been shown to be independent and distinct inventions. Specifically, a form rule has been applied without any study of the similarity in the embodiments of the invention as claimed, and a statement that the compound structures, process of making and methods of use, as well as intermediaries are said to be so varied and dissimilar that they relate to different inventions. This statement simply does not meet the facts.

The two requirements for a proper restriction, that is, that the inventions of Groups I and II are both independent *and* distinct, fail to have been met, and the restriction requirement is respectfully suggested to be improper. With respect to the claims, Applicants have amended Claims 1, 6, 7, 20 and 26 so as to present a more cohesive claim set that relates to a single inventive and special technical feature, which is novel and non-obvious, and will provide the basis for patentability at least with respect to the main claims. Thus, lacking an independent and distinct status the compositions of the Groups I and II will be shown or amended to be linked as a generic claim, and upon a finding of patentability, will provide the basis of allowance for the remaining dependent claims.

Thus, it is respectfully suggested that an improper standard has been applied in this restriction requirement, and reconsideration and withdrawal of the requirement are respectfully requested.

Provisional Election

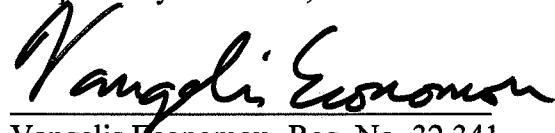
Applicants provisionally elect reordered Group I, Claims 1-4, 6-7, 13, 15-16 20, 26 and 31, drawn to a cohesive set of claims comprising a structural formula, including intermediaries, and a process of making from the intermediaries the general formula (I), as well as a method of use and treatment. Applicant's reserve the opportunity to file a divisional application on the remaining Group claims in the future.

Further Provisional Election of Species

Applicants provisionally elect the subgroups B for the above group election, in which the N-(C)_n-N further forms a piperazine of diazepine ring, as shown in General Formula (I) and asa recited in Claims 1 and 19.

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Respectfully submitted,



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